

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32**

RYDER TRUCK RENTAL, INC.

Employer

and

Case 32-RC-258444

**MACHINISTS AND MECHANICS LODGE NO.
2182, DISTRICT LODGE 190, INTERNATIONAL
ASSOCIATION OF MACHINISTS AND
AEROSPACE WORKERS, AFL-CIO**

Petitioner

DECISION AND DIRECTION OF ELECTION

I. INTRODUCTION

The petition in this matter was filed by Machinists and Mechanics Lodge No. 2182, District Lodge 190, International Association of Machinists and Aerospace Workers, AFL-CIO (Petitioner) on March 26, 2020, under Section 9(c) of the National Labor Relations Act, as amended (Act), seeking to represent a unit of employees employed by Ryder Truck Rental, Inc. (Employer) at its Stockton, California facility (Employer's facility). There are approximately 33 employees in the unit sought.

The only matter at issue is whether the election should be conducted by manual or mail ballot method. Election arrangements, including the voting method, are not litigable matters at a pre-election hearing, but the positions of the parties were solicited for consideration prior to the direction of an election, at an April 22, 2020, telephonic hearing before a hearing officer of the National Labor Relations Board (Board).

The question before me is how best to conduct this election given the reality of the COVID-19 pandemic. The impact of COVID-19 on daily life has been profound. As of this writing, there have been over a million recorded cases of COVID-19 and over 56,329 deaths in the United States. Many of the measures recommended by the Federal and state governments to prevent the spread of the virus are well-known at this point: maintain a 6-foot distance between individuals, work or engage in schooling from home, avoid social gatherings, avoid discretionary travel, and practice good hygiene. *The President's Coronavirus Guidelines for America*; Centers for Disease Control and Prevention, *How to Protect Yourself and Others*.

In addition, many state and municipal governments have issued restrictions tailored to the situation in specific communities. On March 19, 2020, the Governor of the State of California issued Executive Order N-33-20 ordering all individuals living in the State of California to stay home until further notice. On March 22, 2020, an Order of the State Public Health Officer issued identifying Essential Critical Infrastructure Workers within the State of California. On April 14, 2020, an Order of the San Joaquin County Public Health Officer and Director of Emergency

Services of the County of San Joaquin (San Joaquin County Order) issued, requiring all individuals living within San Joaquin County to stay home or within their places of residence to the maximum extent feasible, while enabling essential services to continue, to slow the spread of COVID-19 to the maximum extent possible. This April 14, 2020 San Joaquin County Order was amended on April 24, 2020, but has very little application to the instant proceeding, as it clarified the social distancing protocols restrictions for Faith-based gatherings, implemented mandatory protocols to allow golf courses to resume limited operations, and provided clarification on Essential Businesses involving real estate and landscaping services. The order continues in place until it is rescinded in writing. On April 27, 2020, the counties of Alameda, Contra Costa, Marin, San Francisco, and Santa Clara, as well as the City of Berkeley, have extended their Shelter in Place orders through the end of May.

Although communities nationwide have taken these steps to prevent or slow the spread of COVID-19 the impact of the virus has continued, in California and throughout the United States. The San Joaquin County Public Health Services reports that, as of April 27, 2020, 528 confirmed cases of COVID-19 exist in San Joaquin County. As of that date, 25 San Joaquin County residents have died from COVID-19.

The Employer, which is engaged in the truck rental business, is included within the Transportation Systems Sector that has been deemed one of the Critical Infrastructure Sectors to remain operational during the COVID-19 pandemic. As a result, the majority of employees continue to report for work and perform their regular duties, albeit with at least some changes in regular operations to incorporate social distancing and sanitizing to the extent possible at the Employer's facility. The record reflects that the Employer's business has been slower than usual due to the COVID-19 pandemic, causing the layoff of approximately five of its employees as of the April 22, 2020 hearing.

II. POSITIONS OF THE PARTIES

Petitioner emphasizes that its petition was filed on March 26, 2020, and it wants an election to commence at the earliest practicable date, preferably within three days from the issuance of my decision. Petitioner maintains that a mail ballot election is preferred because of the realities of the current COVID-19 pandemic and its associated restrictions. First and foremost, a manual election requires at least some gathering of people, including voters, Board agents, observers and any party representatives and others that elect to attend the pre-election conference and ballot count. While measures can be taken to limit interaction and make these interactions as safe as possible, a manual vote is ultimately not an essential gathering because the Board's mail ballot procedure exists as an alternative to in-person voting.

Second, beyond the concerns associated with such gatherings, a manual election requires travel of individuals such as Board Agents and party representatives, in and out of Stockton, California, causing an unnecessary risk to the participants and the communities involved. Third, Petitioner notes the Board's procedures for a manual election are well-established and involve steps that are problematic under the current circumstances, with numerous close contact activities such as voters using a ballot booth, observers jointly maintaining a voter list, and a

challenged ballot procedure that involves an exchange of materials between the voter and a Board agent.

The Employer's position is that voting should be conducted entirely by manual ballot, based on the Board's longstanding policy favoring manual balloting. The Employer does not reject the contention that the present pandemic requires special considerations for manual voting. However, the Employer maintains that the risk can be mitigated and that it will take steps necessary to have a safe manual election. These mitigation steps include, but are not limited to: proposing a two hour voting period that will allow voters time for spacing and avoid congregating; conducting in-person voting in an approximate 20,000 square foot empty building or in an outside tailgate-type tent that will allow room and floor markers to maintain social distancing; placing the table used by the observers and Board agent, the voting booth used by the voters, and the ballot box at least 6-feet apart; utilizing a plexiglass screen between the Board agent and the observers; providing hand sanitizer, gloves, clothing coverings, and masks for all participants; providing floor markings and utilizing multiple voting booths to ensure proper social distancing within the voting area and at the voting line; and providing disposable pens or pencils in the voting booth for each voter's one-time use. The Employer additionally notes that the majority of its employees have been working for several weeks at the Employer's facility and are well-versed in social distancing, disinfecting, and other cautionary measures.

In sum, the Employer argues that, considering the above safety precautions, and because the majority of its employees continue to report to the Employer's facility daily, there is no basis to deviate from the Board's preference for manual elections. The Employer is not aware of any cases of COVID-19 in the workforce. The Employer concedes, however, that none of the 37 people who work at the Stockton, California facility have been tested for COVID-19, have their temperatures scanned before entering the facility, or are required to wear face-masks at the facility, although about half wear face-masks on a voluntary basis.

III. BOARD'S ELECTION STANDARDS

Congress has entrusted the Board with a wide degree of discretion in establishing the procedure and safeguards necessary to insure the fair and free choice of bargaining representatives, and the Board in turn has delegated the discretion to determine the arrangements for an election to Regional Directors. *San Diego Gas and Elec.*, 325 NLRB 1143, 1144 (1998); citing *Halliburton Services*, 265 NLRB 1154 (1982); *National Van Lines*, 120 NLRB 1343, 1346 (1958); *NLRB v. A.J. Tower Co.*, 329 U.S. 324, 330 (1946). This discretion includes the ability to direct a mail ballot election where appropriate. *San Diego Gas & Elec.* at 1144-1145. Whatever decision a Regional Director does make should not be overturned unless a clear abuse of discretion is shown. *National Van Lines* at 1346.

The Board's longstanding policy is that elections should, as a rule, be conducted manually. *National Labor Relations Board Casehandling Manual Part Two Representation Proceedings*, Sec. 11301.2 (casehandling manual). However, a Regional Director may reasonably conclude, based on circumstances tending to make voting in a manual election difficult, to conduct an election by mail ballot. *Id.* The casehandling manual addresses the most common situation where a mail ballot is utilized: where employees are "scattered," working in

different geographic areas, working in the same area but traveling on the road, working different shifts, or working combinations of full-time and part-time schedules. *Id.* This scattering of employees was also the issue in *San Diego Gas & Elec.*, and in that case, the Board identified a specific test for use under these circumstances.

IV. REGIONAL DIRECTOR DECISION FOR THIS ELECTION

The instant case raises the issue of whether to direct a mail ballot election based on public health concerns, and specifically whether the circumstances of the COVID-19 pandemic, in Stockton, California at the time of my decision, make a mail ballot appropriate. Before turning to that question, I note there is no contention that the employees in question are scattered by location or schedule or are participating in any strike, lockout, or picketing. Absent public health concerns this would not likely be an election where a mail ballot would be considered.

However, for the reasons articulated earlier, this election will not be held under normal circumstances. Guidelines currently in place at the Federal level recommend avoiding unnecessary social contact and conducting business remotely when possible. Similarly, public health orders in place in the State of California and in San Joaquin County make it clear that gathering is discouraged unless absolutely necessary. Hundreds of residents of San Joaquin County have confirmed COVID-19 cases, and approximately 25 have died. The majority of the Employer's employees are currently working at the Employer's facility because their work is critical to the Transportation System Sector, and because of the nature of the work, no option exists to perform their work remotely. Further, I note that approximately five of the Employer's employees are laid off and thus are not currently working at the Employer's facility. While the mail ballot procedure may not be the Board's preferred procedure, it is one of the Board's procedures for conducting an election. Under the present circumstances, I find it appropriate to order a mail ballot election.

Manual election proceedings inherently require substantial interaction. The unit consists of approximately 33 employees. Any manual election will potentially result in at least 33 interactions between the voters, observers, and the Board Agent or Agents that can be avoided if a mail ballot is used. While the majority of the employees are already in contact with one another at the Employer's facility, at least five of the employees have been laid off and are not currently reporting to the Employer's facility. It is reasonable to conclude that conducting a manual election would only increase the possibility of greater interaction among the Employer's employees. This increased interaction may be minimal, such as an employee standing in a line that would not normally be necessary, or may be major, such as an ill employee reporting to work to vote in the election. The Board's manual procedures do not contain an absentee or remote voting option; an employee must appear in person at the polls to vote. It is not unreasonable to conclude that an employee who is not working due to illness, considered not working due to mild illness, or has self-quarantined due to exposure to someone who is ill, may report to work at the Employer's facility to avoid disenfranchisement in a manual election.

It is also reasonable to conclude that a manual election would result in travel, at a minimum by the Board agent or agents, as well as by the parties and their representatives. Although there is no Federal rule or requirement that strictly prohibits holding a manual election,

I find that holding a mail ballot election, and minimizing travel and the contact between individuals, is within the spirit of the current Federal public health guidance.

In reaching this conclusion, I do not find that a manual election is impossible, or that mail ballot elections are the only appropriate option. I only find that in the particular circumstances of this case, with the number of employees involved, the location of the Employer's facility likely necessitating travel, and the circumstances in San Joaquin County at this time, it is the appropriate option.

I do not find fault with the Employer's carefully considered and comprehensive plan for how a manual election could be conducted at the Employer's facility. The details it has presented, including elements directed at hygiene and sanitation, social distancing, and spreading out time between voters, would be necessary for any manual election. The Employer's experience with running a critical business in the COVID-19 environment also likely makes it well suited to apply these precautions. However, I do note that some of these precautions, by their very nature, introduce other problems. For example, a longer polling period lasting two hours for approximately 33 employees may help limit voters congregating in line while waiting to vote, but this increased polling time significantly increases the time the observers and Board agent conducting the election spend in close proximity to each other. Ultimately, the majority of the Employer's employees are working at the Employer's facility because no alternative exists due to the nature of their work. However, the Board does have an alternative to conducting a manual election. Additionally, current public health guidance strongly recommends avoiding or limiting in-person contact between individuals, and therefore a mail ballot election minimizes such risk.¹

Finally, I do not agree with the Employer's argument, citing *San Diego Gas & Elec.*, that the mail ballot election procedure is *only* intended to address scattered workforces and employees engaged in strikes, lockouts, and picketing not applicable to the instant proceeding. 325 NLRB at 1144-45. I acknowledge that these are the most common reasons that a mail ballot procedure is used, and it is correct that in *San Diego Gas & Elec.*, these reasons were referenced as "situations that normally suggest the propriety of using mail ballots." *Id.* at 1145. However, as stated earlier, absent the current extraordinary circumstances, a mail ballot election would almost certainly not be under consideration in this case. The COVID-19 pandemic is an

¹ I note that this approach of balancing Section 7 rights with public health demands is consistent with the broader approach the Board has taken in response to the current pandemic. On March 19, 2020, due to the extraordinary circumstances related to the COVID-19, the Board suspended all elections, including mail ballot elections, until April 3, 2020. On April 1, 2020, after determining measures were in place at the Regional level to allow elections to resume in a safe and effective manner, the Board did not extend this suspension, but allowed elections to resume as determined by the Regional Directors.

On April 17, 2020, the Board issued a press release indicating that its representation petitions and elections are being processed and conducted by its regional offices. The Board further provided that consistent with their traditional authority, its Regional Directors have discretion as to when, where, and if an election can be conducted, in accordance with existing Board precedent. In doing so, the Board stated that its Regional Directors will consider the extraordinary circumstances of the current pandemic, to include safety, staffing, and federal, state and local laws and guidance.

unprecedented situation, and I do not find that the absence of a history of applying mail ballot procedures in similar circumstances suggests a mail ballot is inappropriate. Ultimately, discretion allows for a response to developing or new circumstances, and the Board has stated Regional Directors retain broad discretion to order a mail ballot election where circumstances dictate. See *Nouveau Elevator Industries, Inc.*, 326 NLRB 470, 471 (1998) (“a Regional Director has broad discretion in determining the method by which an election is held.”) I find circumstances are present here that require me to utilize that discretion and order a mail ballot election for the reasons stated above.

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.²
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time service technicians and fuelers employed by the Employer at its facility located at 3633 Duck Creek Drive, Stockton, CA; excluding all other employees, parts service persons, customer service coordinators, confidential employees, office clerical employees, guards, and supervisors as defined in the Act.

V. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by MACHINISTS AND MECHANICS

² During the hearing, the parties stipulated to the following commerce facts:

The Employer, Ryder Truck Rental, Inc., a Florida corporation, with an office and facility located in Stockton, California, is engaged in the truck rental business. During the past twelve months, the Employer has directly purchased and received products, valued more than \$50,000, from suppliers located outside the State of California.

LODGE NO. 2182, DISTRICT LODGE 190, INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS, AFL-CIO.

A. Election Details

The election will be conducted by mail. The mail ballots will be mailed to employees employed in the appropriate collective-bargaining unit from the office of the National Labor Relations Board, Region 32, on May 4, 2020. Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Region 32 office by close of business on May 25, 2020. In order to be valid and counted, the returned ballots must be received at the Region 32 office prior to the counting of the ballots.

All ballots will be commingled and counted at a location to be determined by the Regional Director at 10:00 a.m. on May 29, 2020.³ The parties will have the opportunity to participate remotely, if necessary, including using Facetime, to observe the count. No party is permitted to record the ballot count.

Any person who has not received a ballot by May 11, 2020, should immediately contact the Region 32 office at (510) 637-3300, or contact Board Agent Nicholas Tsiliacos at (510) 671-3046 to request a ballot.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **April 22, 2020**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

³ If, on the date of the count, the Region 32 office is closed, or the staff of the Region 32 office is working remotely, the count will be done remotely. If the Regional Director determines this is likely, a reasonable period of time before the count, the parties will be provided information on how to participate in the count by videoconference.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **Thursday, April 30, 2020**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

The list must be filed electronically with the Region and served electronically on the other parties named in this decision. The list must be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election.

For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated at Oakland, California this 28th day of April 2020.



Valerie Hardy-Mahoney
Regional Director
National Labor Relations Board
Region 32
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